

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DERRICK JEROME LEWIS,

Plaintiff,

v.

KIMBERLY J. MUELLER, et al.,

Defendants.

No. 2:23-cv-1595 DJC KJN P

ORDER

Plaintiff, a state prisoner proceeding pro se, filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 2, 2024, the magistrate judge filed findings and recommendations. Good cause appearing, the findings and recommendations are vacated.<sup>1</sup>

Plaintiff requests leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis is granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in

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<sup>1</sup> Plaintiff was not a prisoner or detained at the time he filed the actions referenced in the findings and recommendations. (ECF No. 11.) Therefore, 28 U.S.C. § 1915(g) does not apply.

1 accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct  
 2 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and  
 3 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments  
 4 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.  
 5 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time  
 6 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.  
 7 § 1915(b)(2).

8 As discussed below, plaintiff's complaint is dismissed with leave to amend.

### 9 Screening Standards

10 The court is required to screen complaints brought by prisoners seeking relief against a  
 11 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
 12 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
 13 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek  
 14 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

15 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
 16 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
 17 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
 18 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
 19 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
 20 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
 21 Cir. 1989); Franklin, 745 F.2d at 1227.

22 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon  
 23 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in  
 24 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467  
 25 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt  
 26 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under  
 27 this standard, the court must accept as true the allegations of the complaint in question, Hosp.  
 28 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light

most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

### The Civil Rights Act

To state a claim under § 1983, a plaintiff must demonstrate: (1) the violation of a federal constitutional or statutory right; and (2) that the violation was committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). An individual defendant is not liable on a civil rights claim unless the facts establish the defendant's personal involvement in the constitutional deprivation or a causal connection between the defendant's wrongful conduct and the alleged constitutional deprivation. See Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989); Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978). That is, plaintiff may not sue any official on the theory that the official is liable for the unconstitutional conduct of his or her subordinates. Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). The requisite causal connection between a supervisor's wrongful conduct and the violation of the prisoner's constitutional rights can be established in a number of ways, including by demonstrating that a supervisor's own culpable action or inaction in the training, supervision, or control of his subordinates was a cause of plaintiff's injury. Starr v. Baca, 652 F.3d 1202, 1208 (9th Cir. 2011).

### Discussion

#### Improper Defendants

Among the 76 named defendants, plaintiff names various judges. The Supreme Court has held that judges acting within the course and scope of their judicial duties are absolutely immune from liability for damages under § 1983. Pierson v. Ray, 386 U.S. 547 (1967). A judge is "subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" Stump v. Sparkman, 435 U.S. 349, 356-7 (1978), quoting Bradley v. Fisher, 13 Wall. 335, 351 (1872). A judge's jurisdiction is quite broad. The two-part test of Stump v. Sparkman determines its scope:

The relevant cases demonstrates that the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge and to the expectation of the parties, i.e., whether they dealt with the judge in his judicial capacity.

1 Id. at 361. Here, in plaintiff's second claim for relief, plaintiff names multiple judges and sets  
2 forth case numbers assigned to them. (ECF No. 1 at 7.) Because judges acting in their judicial  
3 capacity are entitled to absolute immunity, plaintiff should not renew his claims against judges in  
4 any amended complaint.

5 Plaintiff also names federal agencies as defendants. However, any putative claim against  
6 a federal agency is barred because federal agencies are not persons within the meaning of 42  
7 U.S.C. § 1983. "[A] federal agency is not a 'person' within the meaning of § 1983." Jachetta v.  
8 U.S., 653 F.3d 898, 908 (9th Cir. 2011) (rejecting argument that 42 U.S.C. § 1983 waived  
9 sovereign immunity); see also Hoffman v. U.S. Dept. of Housing and Urban Development, 519  
10 F.2d 1160, 1165 (5th Cir. 1975) ("[A] federal agency is . . . excluded from the scope of § 1983  
11 liability."); Peoples v. Navy Board Annex, 2020 WL 1923166, at \*2 (E.D. Cal. Apr. 21, 2020)  
12 ("The Navy Board Annex is a federal agency, not a state actor that may be sued under § 1983."),  
13 report and recommendation adopted, 2020 WL 3256287 (E.D. Cal. June 16, 2020).

14 In addition, plaintiff names various state agencies as defendants. The Eleventh  
15 Amendment prohibits federal courts from hearing a Section 1983 lawsuit in which damages or  
16 injunctive relief is sought against a state or its agencies absent "a waiver by the state or a valid  
17 congressional override. . . ." Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999). "The  
18 Eleventh Amendment bars suits which seek either damages or injunctive relief against a state, 'an  
19 arm of the state,' its instrumentalities, or its agencies." See Fireman's Fund Ins. Co. v. City of  
20 Lodi, Cal., 302 F.3d 928, 957 n.28 (9th Cir. 2002) (internal quotation and citations omitted), cert.  
21 denied, 538 U.S. 961 (2003). "The State of California has not waived its Eleventh Amendment  
22 immunity with respect to claims brought under § 1983 in federal court. . . ." Dittman, 191 F.3d at  
23 1025-26 (citing Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 241 (1985)). Accordingly,  
24 plaintiff's putative claims against defendant state agencies are barred by the Eleventh  
25 Amendment.

26 Finally, plaintiff also names an inmate, various banks, private companies, and private  
27 citizens as defendants. However, to state a claim under § 1983, a plaintiff must demonstrate: (1)  
28 the violation of a federal constitutional or statutory right; and (2) that the violation was committed

1 by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988);  
 2 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). The companies and private individuals  
 3 plaintiff named as defendants do not appear to be acting under color of state law.

#### 4 Complaint Must Be Dismissed

5 The court finds the allegations in plaintiff's complaint so vague and conclusory that it is  
 6 unable to determine whether the current action is frivolous or fails to state a claim for relief. The  
 7 court has determined that the complaint does not contain a short and plain statement as required  
 8 by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a  
 9 complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones  
 10 v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least  
 11 some degree of particularity overt acts which each defendant engaged in that support plaintiff's  
 12 claim. Id. Here, plaintiff names 76 defendants, but fails to include charging allegations as to  
 13 each named defendant, and improperly names multiple defendants.<sup>2</sup> Because plaintiff failed to  
 14 comply with the requirements of Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The  
 15 court will, however, grant leave to file an amended complaint.

#### 16 Leave to Amend

17 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions  
 18 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.  
 19 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms how  
 20 each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there  
 21 is some affirmative link or connection between a defendant's actions and the claimed deprivation.

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22 <sup>2</sup> Plaintiff may only pursue related claims against multiple defendants. While a plaintiff may  
 23 properly assert multiple claims against a single defendant, Fed. Rule Civ. P. 18, a plaintiff may  
 24 join multiple defendants in one action only where "any right to relief is asserted against them  
 25 jointly, severally, or in the alternative with respect to or arising out of the same transaction,  
 26 occurrence, or series of transactions and occurrences" and "any question of law or fact common  
 27 to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2). Unrelated claims against  
 28 different defendants must be pursued in separate lawsuits. See George v. Smith, 507 F.3d 605,  
 607 (7th Cir. 2007). This rule is intended "not only to prevent the sort of morass [a multiple  
 claim, multiple defendant] suit produce[s], but also to ensure that prisoners pay the required filing  
 fees -- for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals  
 that any prisoner may file without prepayment of the required fees. 28 U.S.C. § 1915(g)." George,  
 507 F.3d at 607.

1 Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980);  
2 Johnson v. Duffy, 588 F.2d at 743. Furthermore, vague, and conclusory allegations of official  
3 participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266,  
4 268 (9th Cir. 1982).

5 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to  
6 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended  
7 complaint be complete in itself without reference to any prior pleading. This is because, as a  
8 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
9 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no  
10 longer serves any function in the case. Therefore, in an amended complaint, as in an original  
11 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

12 In accordance with the above, IT IS HEREBY ORDERED that:

13 1. The findings and recommendations (ECF No. 21) are vacated.

14 2. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

15 3. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
16 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.  
17 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the  
18 Director of the California Department of Corrections and Rehabilitation filed concurrently  
19 herewith.

20 4. Plaintiff's complaint is dismissed.

21 5. Plaintiff is granted thirty days from the date of service of this order to file an amended  
22 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil  
23 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number  
24 assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original and

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two copies of the amended complaint; failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

Dated: February 23, 2024



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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